

**RESOLUTION OF THE CITY
COUNCIL OF THE CITY OF
MINNEAPOLIS
Approving Temporary
Construction Easement and
Agreement For St. Anthony
Parkway Bridge Over BNSF
Northtown Yard – Parcel 10**

WHEREAS, on December 9, 1999, the City Council adopted its Resolution No. 99R-426, “Adoption of 2000-2004 Capital Program and fixing the maximum amounts for 2000 to be expended by the various funds”;

WHEREAS, on December 9, 1999, the City Council adopted its Resolution No. 99R-427, “Request to issue and sell bonds for 2000 Capital Program”;

WHEREAS, on December 13, 2004, the City Council adopted its Resolution No. 2004-580, “Adoption of 2005-2010 Capital Program and fixing the maximum amounts for 2005 to be expended by the various funds”;

WHEREAS, on December 13, 2004, the City Council adopted its Resolution No. 2004R-582 and its Resolution No. 2004R-583, “Request to issue and sell bonds for 2005 Capital Program”;

WHEREAS, on May 5, 2007, the City Council authorized submission of an application for federal funds for the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFE TEA LU) for the St. Anthony Bridge Project with a recommendation to commit City funds should the project be selected per federal requirements;

WHEREAS, on April 24, 2009, the City Council authorized proper City Officers to submit the St. Anthony Bridge Project application for Member-Designated High Priority Project;

WHEREAS, on July 2, 2010, the City Council adopted its Resolution No. 2010R-331, “Authorizing execution of State Grant Agreement No. SG-2009-072 between Minneapolis and the Metropolitan Council”;

WHEREAS, on July 2, 2010, the City Council adopted its Resolution No. 2010R-333 and its Resolution No. 2010R-334, “Amending the 2010 Capital Improvement and PW-Transportation Capital Agency Appropriations by \$600,000 upon execution of State Grant Agreement No. SG-2009-072”;

WHEREAS, on March 7, 2013, the City Council authorized a request for proposal for engineering service;

WHEREAS, on July 19, 2013, the City Council authorized execution of a contract with Short Elliott Hendrickson, Inc. for design services and authorized signing the Memorandum of Agreement under Section 106 of the National Historic Preservation Act;

WHEREAS, on November 12, 2013, the City Council adopted a resolution authorizing acquisition through negotiations or condemnation of temporary construction easements and permanent easements across parcels therein for transportation related purposes;

WHEREAS, on February 25, 2014, the City Council adopted its Resolution No. 2014R-____ Project Designation, Bridge Type and Project Layout Approval, approving the project layout for construction of a new St. Anthony Parkway Bridge over the BNSF Northtown Yard;

WHEREAS, agents on behalf of the City have negotiated a proposed agreement with Ellis Properties, LLP, fee owner of the real estate at 3147 California Street, N.E., which is described in Exhibit A attached hereto, under which Ellis Properties, LLP will grant the City temporary easements containing 41,243 square feet for the St. Anthony Parkway Bridge Project for compensation in the amount of \$57,375.00;

WHEREAS, with consideration for additional easements and the loss of rental income which the owner will incur as a result of the City's project, the proposed settlement amount to be paid to the owner is consistent with the opinion of damages expressed by an independent real estate appraiser retained by the City, whose appraisal report was provided to the owner in the course of negotiations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

Upon approval of the proposed easement and agreement by the City Attorney and outside counsel retained by the City and execution and delivery of the easement on behalf of Ellis Properties, LLP, the City Contracting Officer is authorized to execute the easement and agreement on behalf of the City and to pay Ellis Properties, LLP, the amount described in the agreement.

EXHIBIT A

TEMPORARY EASEMENT AND AGREEMENT

THIS INDENTURE, made this ____ day of _____, 2014, by and between Ellis Properties, LLP, a Minnesota limited liability partnership, Grantor, and the City of Minneapolis, a Minnesota municipal corporation, Grantee.

Recitals

1. **Legal Description of Property.** Grantor is the owner in fee simple of the real estate hereinafter described ("Property"):

That part of Lot 7, Auditor's Subdivision No. 35, Hennepin County, Minnesota, described as follows: Commencing at the intersection of the South line of 33rd Avenue Northeast with the East line of said Lot 7; thence Southwesterly in a straight line which if extended would strike a point distant 40 feet South from the South line of 33rd Avenue Northeast and distant 335 feet West from the East line of Section 3, Township 29, North Range 24, West of the 4th Principal Meridian, to the East line of California Street as opened by the City Council of the City of Minneapolis; thence South along the East line of said California Street to the South line of said Lot 7; thence East along the South line of said Lot 7 to the Southeasterly line of the right-of-way of the most Easterly spur track of the Northern Pacific Railroad (now known as Burlington Northern Inc.); thence Northeasterly along the Southeasterly right-of-way line of said spur track to the East line of said Lot 7; thence Northerly along the East line of said Lot 7 to point of beginning, EXCEPT the right-of-way for the spur tracks of the Minneapolis, St. Paul and Sault Sainte Marie Railroad (now known as Soo Line Railroad Company) and further EXCEPTING the right-of-way for spur tracks of the Northern Pacific Railway Company, (now known as Burlington Northern Inc.).

Abstract Property

Containing 90,147 square feet (2.07 acres)

P.I.D. No. 03-029-24-41-0002

Street Address-3147 California Street Northeast, Minneapolis, MN. 55418

2. **Grant of Temporary Easements.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor hereby bargains, sells and transfers unto Grantee, its successors and assigns, temporary easements over, under, across and upon those parts of the Property which are legally described as follows:

A temporary easement for construction purposes over, under and across that part of the herein described Parcel A, lying northerly of the herein described Line A and its westerly extension:

And

A non-exclusive temporary easement for ingress and egress purposes over, under and across that part of the herein described Parcel A, lying southerly of the herein described Line A and its westerly extension, and lying northerly of the herein described Line B and its westerly extension:

PARCEL A:

That part of Lot 7, Auditor's Subdivision No. 35, Hennepin Co., Minn., according to the recorded plat thereof, Hennepin County, Minnesota, lying easterly of the easterly right-of-way line of California Street NE as opened by the City of Minneapolis; lying northwesterly and westerly of the westerly right-of-way line of the spur tracks of the Canadian Pacific Railroad; and lying southerly of the following described line and its extensions:

Beginning at the intersection of the south right-of-way line of St. Anthony Parkway as opened by the City of Minneapolis with the easterly line of said Lot 7; thence southwesterly in a straight line which if extended would strike a point distant 40.00 feet south from said south right-of-way line of St. Anthony Parkway and distant 335.00 feet west from the east line of the Northeast Quarter of the Southeast Quarter of Section 3, Township 29, Range 24, said Hennepin County, and there terminating.

LINE A:

Commencing at the northeast corner of the Northeast Quarter of the Southeast Quarter of Section 3, Township 29, Range 24, Hennepin County, Minnesota; thence on an assumed bearing of South 00 degrees 51 minutes 19 seconds West along the east line of said Northeast Quarter of the Southeast Quarter, a distance of 173.96 feet to the point of beginning of the line to be described; thence North 89 degrees 10 minutes 44 seconds West to the easterly right-of-way line of California Street NE as opened by the City of Minneapolis, and said line there terminating.

LINE B:

Commencing at the northeast corner of the Northeast Quarter of the Southeast Quarter of Section 3, Township 29, Range 24, Hennepin County, Minnesota; thence on an assumed bearing of South 00 degrees 51 minutes 19 seconds West along the east line of said Northeast Quarter of the Southeast Quarter, a distance of 537.05 feet to the point of beginning of the line to be described; thence North 89 degrees 10 minutes 44 seconds West to the easterly right-of-way line of California Street NE as opened by the City of Minneapolis, and said line there terminating.

Temporary construction easement tract contains 3,498 square feet (0.08 acres).

Temporary ingress and egress easement tract contains 37,745 square feet (0.87 ac.)

3. **Rights Within Temporary Construction Easement.** Said temporary easement for construction purposes shall include, but not be limited to, the right of the Grantee, its contractors, employees, agents and invitees to enter upon said construction easement tract, for the purpose of constructing roadway, utility and drainage improvements, and all purposes in furtherance thereof, or related thereto, including grading, sloping, excavating, restoring, depositing earthen materials, moving and storing equipment, supplies, and materials, and removing pavement, sidewalks, bushes, trees, undergrowth and other buildings, improvements and obstructions as, in the judgment of Grantee, may interfere with Grantee's construction of such roadway, utility and drainage improvements.

4. **Terms of Temporary Easements.** The terms of the temporary easements granted herein shall commence on the effective date stated in a written notice from Grantee, which notice is given at least 30 days prior to the effective date stated in said notice, and shall terminate on the date which is 20 months after the effective date stated in the written notice.

5. **Title.** Grantor covenants with Grantee that it is the owner of the Property in fee simple. Grantor further covenants that it has the sole right to grant said easements, and that any judgments or liens against parties with the same or similar names as Grantor are not against Grantor.

6. **Environmental Matters.** The Grantee shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and attorneys' fees, costs, disbursements, or losses resulting from any claims, actions, suits or proceedings relating to a release or threat of release of any hazardous substances, pollutants, or contaminants that may have existed on, or relate to the easement tracts or the Property prior to the date of this instrument.

7. **Restoration of Property.** Prior to the expiration of the temporary construction easement term, Grantee shall restore the surface of the temporary construction easement tract .

8. **Binding Effect.** The terms and conditions of this instrument shall run with the land and be binding on the Grantor and the personal representatives, heirs, devisees, successors and assigns of Grantor.

IN WITNESS WHEREOF, said Grantor has caused this instrument to be executed the day and year first above written.

GRANTOR:

ELLIS PROPERTIES, LLP,

By: _____
Managing Partner

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } ss.

 This instrument was acknowledged before me on _____, 2014, by _____, the Managing Partner of Ellis Properties, LLP, the Minnesota limited liability partnership described in and which executed the foregoing instrument; and that ____ signed ____ name thereto by order of said limited liability partnership.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Kennedy & Graven, Chartered (RJL)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
612-337-9300
Parcel 10